IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8628 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MAJIDBHAI KARIMBHAI MANSURI

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

Mr. S.R. Divetia, AGP for Respondents Nos. 1 to 3.

Mr. Sunil C. Patel, Add.Central Govt.Standing Counsel, for respondent No.4.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 13/02/98

ORAL JUDGEMENT

By this application, the petitioner, who is the detenu, calls in question the legality and validity of the detention order dated 27th October 1997, passed by the District Magistrate, Valsad, invoking his powers under Section 3 (2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short `the Act').

2. The petitioner is a shop-keeper and deals in kerosene. He has to sell the kerosene to the card-holders every fortnight as per the norms fixed. The District Magistrate had the information that by adopting

several mal-practices the petitioner was diverting the quota of kerosene to else-where for profiteering purpose. He therefore carried out necessary inspection and found that the petitioner had not maintained the stock-patrak and even the bill books. He had not even maintained kaccha list of the sale made, and had not displayed the board showing the opening balance and the rate of kerosene. The stock on hand was not tallying with the last entry in the relevant records. The District Magistrate then found after further inquiry and recording some statements of the customers that the petitioner was not selling the kerosene to the people as per the schedule once in fortnight, but was giving the same to others for the purpose of profiteering motive and thereby was encouraging the black economy. To check the mal-practices adopted by the petitioner, stern action was found necessary and the District Magistrate in the circumstances of the case found that detention of the petitioner was the only way out to check his mal-practices and black-economy. The impugned order then came to be passed consequent upon which the petitioner has been arrested and at present he is under detention.

2. On several grounds, the order of detention is assailed, but at the time of hearing before me, both the parties confined to the only point namely representation having been not considered promptly. Under Article 22 (5) of the Constitution of India, whenever such detention order is passed, the detenue has to be informed providing necessary documents and particulars so that he can make effective representation against the order passed. If he makes the representation after the receipt thereof, the concerned authority has to deal with the same promptly and dispose the same of at his earliest as liberty of the citizen is put at the highest pedestal in the Constitution. Whenever without any trial a man is confined, the authority passing the order or receiving the representation must be prompt in disposing of the representation but if there is undue delay the order of detention if passed has to be declared unconstitutional. At this stage, it is necessary to refer the decision of the Supreme Court rendered in the case of Raghavendra Singh vs. Superintendent, District Jail, Khanpur and others - AIR 1986 S.C. 356 wherein it is laid down that the representation must be dealt with promptly and disposed of without any undue delay. Till the same is disposed of without wasting the time, the same has to be attended to and final decision has to be passed. If the representation is received by one authority who is not supposed to deal with the same, his duty would be to promptly send it to the concerned department or authority

so that the said authority may after the receipt thereof deal with the same promptly and dispose the same of at his earliest without wasting his time. In the case before the Supreme Court, the representation was sent to the President's Secretariat, and the Prime Minister's Secretariat received the same on 19th March 1985; and thereafter it was sent to the Ministry of Home Affairs on 25th May 1985; the same was then dealt with on May 31, 1985. There was, therefore no delay so far as the Ministry of Home Affairs was concerned. But there was a delay in sending the representation from Prime Minister's Secretariat to the Ministry of Home Affairs. In that regard, it was argued before the Supreme Court that the representation should have been addressed to the Ministry of Home Affairs and not to the President or Prime Minister because the President or the Prime Minister receives thousands of memorials or representations from every part of the country and therefore it was not expected to be dealt with as expeditiously as possible as they would be considered had the same been addressed to the appropriate ministry. Dealing with the contention, it is observed that, even if the representation is sent to the Prime Minister or the President, the same has to be sent to the concerned department for taking appropriate action. There may be some delay in sending the representation from one Secretariat to the concerned department or Ministry and in that case some allowance may be made for the time taken in forwarding the representation to the appropriate Ministry and even taking all such time allowance if the representation is not dealt with promptly and no appropriate order at the earliest is passed, the detenu will be entitled to be set at liberty. It is also observed that even if the representation is addressed to the President or the Prime Minister, no fault can be found with the representation because the "Central Government" means the `President' or the `Prime Minister', and if the representation is addressed to the President or the Prime Minister, the same should be considered to be the representation properly addressed to the Central Government.

3. In view of such law made clear by the Supreme Court, the point qua representation in this case raised if considered the detention order cannot be maintained as the representation is not at all considered. Of course the Government has come forward with the say that the representation has not been received. At page 45, the Window-Slip No.2126 indicating receipt of the Registered Post AD by postal authority is produced which shows that the representation was despatched on 18th November 1997 to the Hon'ble Minister, Food & Civil Supply Department,

Gandhinagar. Another representation dated 22.11.1997 was addressed by the petitioner to the Hon'ble Minister, Civil Supplies, Consumer Affairs & Public Distribution Mantralaya, New Delhi by Speed Post. It seems that the petitioner has not received the acknowledgment slip from the postal department qua the representation sent on 22.11.1997 and therefore the petitioner's advocate had forwarded a complaint dated 27.11.97 to the Post Master, Speed Post, Ahmedabad. The Deputy Manager, Speed Post, Ahmedabad,on 12-12-1997 informed the petitioner that the article despatched on 22.11.1997 was delivered to the addressee on 24-11-1997. When thus on 24th November 1997 the representation was received, the same ought to have been considered at the earliest, but it is not considered uptill now and therefore there is inordinate delay in disposing of the representation. When that is the case, in view of the decision in Raghavendra Singh (Supra), the impugned detention order cannot be maintained and the continued detention must be held unconstitutional.

4. For the aforesaid reason, the present petition is allowed and the impugned order dated 27th October 1997, being unconstitutional and illegal, is hereby set aside and the petitioner is ordered to be set at liberty forthwith if no longer required in any other case. Rule is accordingly made absolute.

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(rmr.)